CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

Bureau of Customs and Border Protection

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 37 **DECEMBER 17, 2003** **NO. 51**

This issue contains:

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 03–33)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR NOVEMBER, 2003

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Dec. 03–30 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): November 11, 2003; November 27, 2003

Australia dollar:

November 12, 2003	$0.718000
November 13, 2003	.719600
November 14, 2003	.717900
November 15, 2003	.717900
November 16, 2003	.717900
November 18, 2003	.721200
November 19, 2003	.722900
November 20, 2003	.723800
November 21, 2003	.722700
November 22, 2003	.722700
November 23, 2003	.722700
November 24, 2003	.717600
November 25, 2003	.718600
November 26, 2003	.723700
November 27, 2003	.723700
November 28, 2003	.723600
November 29, 2003	.723600
November 30, 2003	.723600

New Zealand dollar:

November 13, 2003	$0.629700
November 14, 2003	.629700
November 15, 2003	.629700
November 16, 2003	.629700
November 18, 2003	.633900
November 19, 2003	.638500

FOREIGN CURRENCIES—Variances from quarterly rates for November 2003 continued):

New Zealand dollar: (continued):

November 20, 2003	.642500
November 21, 2003	.640600
November 22, 2003	.640600
November 23, 2003	.640600
November 24, 2003	.637900
November 25, 2003	.637100
November 26, 2003	.641800
November 27, 2003	.641800
November 28, 2003	.639500
November 29, 2003	.639500
November 30, 2003	.639500

South Africa rand:

November 21, 2003	$0.153257
November 22, 2003	.153257
November 23, 2003	.153257
November 24, 2003	.152321
November 25, 2003	.152439
November 26, 2003	.154799
November 27, 2003	.154799
November 28, 2003	.157011
November 29, 2003	.157011
November 30, 2003	.157011

Dated: December 2, 2003

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(CBP Dec. 03–34)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR NOVEMBER, 2003

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): November 11, 2003; November 27, 2003

European Union euro:

November 1, 2003	$1.160900
November 2, 2003	1.160900

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for November 2003 (continued):

European Union euro: (continued):

November 3, 2003	1.145400
November 4, 2003	1.149700
November 5, 2003	1.147300
November 6, 2003	1.141700
November 7, 2003	1.150500
November 8, 2003	1.150500
November 9, 2003	1.150500
November 10, 2003	1.151500
November 11, 2003	1.151500
November 12, 2003	1.164700
November 13, 2003	1.171100
November 14, 2003	1.174300
November 15, 2003	1.174300
November 16, 2003	1.174300
November 17, 2003	1.174400
November 18, 2003	1.189300
November 19, 2003	1.190900
November 20, 2003	1.189500
November 21, 2003	1.191300
November 22, 2003	1.191300
November 23, 2003	1.191300
November 24, 2003	1.176800
November 25, 2003	1.178500
November 26, 2003	1.191800
November 27, 2003	1.191800
November 28, 2003	1.199500
November 29, 2003	1.199500
November 30, 2003	1.199500

South Korea won:

November 1, 2003	$0.000845
November 2, 2003	.000845
November 3, 2003	.000843
November 4, 2003	.000843
November 5, 2003	.000842
November 6, 2003	.000847
November 7, 2003	.000847
November 8, 2003	.000847
November 9, 2003	.000847
November 10, 2003	.000851
November 11, 2003	.000851
November 12, 2003	.000853
November 13, 2003	.000854
November 14, 2003	.000854
November 15, 2003	.000854
November 16, 2003	.000854
November 17, 2003	.000845
November 18, 2003	.000847
November 19, 2003	.000849
November 20, 2003	.000839
November 21, 2003	.000836

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for November 2003 (continued):

South Korea won: (continued):

November 22, 2003	.000836
November 23, 2003	.000836
November 24, 2003	.000829
November 25, 2003	.000831
November 26, 2003	.000831
November 27, 2003	.000831
November 28, 2003	.000832
November 29, 2003	.000832
November 30, 2003	.000832

Taiwan N.T. dollar:

November 1, 2003	$0.029429
November 2, 2003	.029429
November 3, 2003	.029394
November 4, 2003	.029412
November 5, 2003	.029360
November 6, 2003	.029412
November 7, 2003	.029412
November 8, 2003	.029412
November 9, 2003	.029412
November 10, 2003	.029455
November 11, 2003	.029455
November 12, 2003	.029412
November 13, 2003	.029412
November 14, 2003	.029412
November 15, 2003	.029412
November 16, 2003	.029412
November 17, 2003	.029403
November 18, 2003	.029412
November 19, 2003	.029412
November 20, 2003	.029386
November 21, 2003	.029369
November 22, 2003	.029369
November 23, 2003	.029369
November 24, 2003	.029360
November 25, 2003	.029326
November 26, 2003	.029265
November 27, 2003	.029265
November 28, 2003	.029240
November 29, 2003	.029240
November 30, 2003	.029240

Dated: December 2, 2003

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 10 2003)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of October 2003. The last notice was published in the CUSTOMS BULLETIN on November 19, 2003.

Corrections or updates may be sent to Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572–8710.

Dated: November 25, 2003.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0300137	20031002	20231010	SNOOZLE	THE BOYD'S COLLECTION LTD.	N
COP0300138	20031002	20231002	MR. BAYBEARY	THE BOYDS COLLECTION LTD.	N
COP0300139	20031002	20231002	MARTIN V MOOSINGTON	THE BOYDS COLLECTION LTD.	N
COP0300140	20031002	20231002	MRS. BAYBEARY	THE BOYDS COLLECTION LTD.	N
COP0300141	20031002	20231002	BOO TO YOU	THE BOYDS COLLECTION LTD.	N
COP0300142	20031002	20231002	MATTHEW	THE BOYDS COLLECTION LTD.	N
COP0300143	20031002	20231002	GLENDA Z JODIBEAR	THE BOYDS COLLECTION LTD.	N
COP0300144	20031002	20231002	CONSTANCE	THE BOYDS COLLECTION LTD.	N
COP0300145	20031007	20231007	HEMP LEAF NECKLACE	SHAHRAM NAGHI	N
COP0300146	20031010	20231010	CREATIVE IDEAS COLLECTION 2002	COSHIMA USA IMPORT INC.	N
COP0300147	20031023	20231023	KOREANA BLANKET KSB TRADING CO.	KSB TRADING COMPANY	N
COP0300148	20031029	20231029	GAZILLION BUBBLES BOTTLE	FUNRISE TOYS, LTD.	N
COP0300149	20031029	20231029	GAZILLION BUBBLES WAND	FUNRISE TOYS, LTD.	N
SUBTOTAL RECORDATION TYPE			13		
TMK0300750	20031002	20101109	WHITE TOP FENCE POST DESIGN	CMC STEEL FABRICATORS, INC.	N
TMK0300751	20031002	20120129	VOLCOM	STONE BOARDWEAR, INC.	N
TMK0300752	20031002	20050912	BEBOP	BEBOP INCORPORATED	N
TMK0300753	20031002	20121020	GREENSHELL	NEW ZEALAND MUSSEL INDUSTRY	N
TMK0300754	20031002	20121026	HUNTERS RUN	THE LIMITED STORES INC.	N
TMK0300755	20031002	20130708	WALLVERINE	HYDE MANUFACTURING COMPANY	N
TMK0300756	20031002	20070624	CONFIGURATION OF A PET SHELTER	DOSKOCIL MANUFACTURING COMPANY	N
TMK0300757	20031002	20100530	CONFIGURATION OF A PET SHELTER	DOSKOCIL MANUFACTURING COMPANY	N
TMK0300758	20031002	20070128	CONFIGURATION OF A PET SHELTER	DOSKOCIL MANUFACTURING COMPANY	N
TMK0300759	20031002	20110115	CONFIGURATION OF A PET SHELTER	DOSKOCIL MANUFACTURING COMPANY	N
TMK0300760	20031002	20060723	AV	ADRIENNE VITTADINI, LLC	N
TMK0300761	20031002	20050815	ADRIENNE VITTADINI	ADRIENNE VITTADINI, LLC	N
TMK0300762	20031002	20121231	ADRIENNE VITTADINI	ADRIENNE VITTADINI LLC	N
TMK0300763	20031002	20130121	ADRIENNE VITTADINI	ADRIENNE VITTADINI, LLC	N
TMK0300764	20031002	20041213	ADRIENNE VITTADINI	ADRIENNE VITTADINI, LLC	N
TMK0300765	20031002	20100612	ADRIENNE VITTADINI	DE V&P, INC.	N
TMK0300766	20031007	20050912	GOLDEN BOY BRAND & DESIGN	LIEN HOA FOOD CORPORATION	N
TMK0300767	20031007	20070325	LIEN HOA BRAND	LIEN HOA FOOD CORPORATION	N
TMK0300768	20031007	20070325	LIEN HOA BRAND	LIEN HOA FOOD CORPORATION	N
TMK0300769	20031007	20100201	FAMILY HORSE & DESIGN	LIEN HOA FOOD CORPORATION	N
TMK0300770	20031007	20120702	DESIGN OF GOLDEN BOY	LIEN HOA FOOD CORPORATION	N
TMK0300771	20031008	20080419	PANTENE	THE PROCTER & GAMBLE COMPANY	N
TMK0300772	20031008	20100424	PANTENE PRO-V(STYLIZED)	THE PROCTER & GAMBLE COMPANY	N
TMK0300773	20031008	20110424	PRO-V(STYLIZED)	THE PROCTER & GAMBLE COMPANY	N
TMK0300774	20031008	20061204	PANTENE	THE PROCTER & GAMBLE COMPANY	N
TMK0300775	20031008	20050304	PANTENE	THE PROCTER & GAMBLE COMPANY	N
TMK0300776	20031008	20130408	FIJI	NATURAL WATERS OF VITI, LTD.	N
TMK0300777	20031008	20121217	A TASTE OF PARADISE	NATURAL WATERS OF VITI, LTD.	N
TMK0300778	20031008	20110619	THE EVOLUTION OF WATER	NATURAL WATERS OF VITI, LTD.	N
TMK0300779	20031008	20130408	FIJI & TROPICAL WATERFALL BOX DESIGN	NATURAL WATERS OF VITI, LTD.	N
TMK0300780	20031008	20130513	FIJI & TROPICAL WATERFALL DESIGN	NATAURAL WATERS OF VITI, LTD.	N
TMK0300781	20031008	20091019	THREE-DIMENSIONAL LABEL AND BOTTLE DESIGN	NATURAL WATERS OF VITI, LTD.	N
TMK0300782	20031010	20130812	BLACK SANDALWOOD	HOUSE OF MOHAN CORPORATION	N

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TMK0300783	20031014	20110109	ULTRAGRIP	THE GILLETTE COMPANY	N
TMK0300784	20031014	20040407	GILLETTE	THE GILLETTE COMPANY	N
TMK0300785	20031016	20031221	WOLFPAX AND DESIGN	WOLFPAX INC.	N
TMK0300786	20031016	20130617	POLO RALPH LAUREN BLUE	PRL USA HOLDINGS, INC.	N
TMK0300787	20031016	20130223	SIEGFRIED & DESIGN	SIEGFRIED & PARZIFAL, INC.	N
TMK0300788	20031016	20101121	DESIGN ("H" LOGO)	HURLEY INTERNATIONAL LLC	N
TMK0300789	20031016	20070624	BUNGALOW BRAND	VIEWPOINT INTERNATIONAL, INC.	N
TMK0300790	20031016	20031102	TOMMY BAHAMA	VIEWPOINT INTERNATIONAL, INC.	N
TMK0300791	20031016	20091014	NANNETTE	CHILDREN'S APPAREL NETWORK, LTD.	N
TMK0300792	20031016	20130504	CALLAWAY (STYLIZED LETTERING)	CALLAWAY GOLF COMPANY	N
TMK0300793	20031016	20120929	BIG BERTHA (STYLIZED LETTERING)	CALLAWAY GOLF COMPANY	N
TMK0300794	20031016	20120728	ODYSSEY	CALLAWAY GOLF COMPANY	N
TMK0300795	20031016	20120908	S2H2	CALLAWAY GOLF COMPANY	N
TMK0300796	20031020	20130601	KCR ROYALS AND DESIGN	KANSAS CITY ROYALS BASEBALL CORP	N
TMK0300797	20031020	20131005	BIC & BOY DESIGN	BIC CORPORATION	N
TMK0300798	20031020	20130708	DESIGN	ROSE AMERICA CORPORATION	N
TMK0300799	20031020	20130401	FINGERPRINT ICON	OAKLEY, INC.	N
TMK0300800	20031020	20130902	AFRICAN PEACH	HOUSE OF MOHAN CORPORATION	N
TMK0300801	20031020	20130727	FOXVIDEO	TWENTIETH CENTURY FOX FILM CORP.	N
TMK0300802	20031020	20130727	FOXVIDEO	TWENTIETH CENTURY FOX FILM CORP.	N
TMK0300803	20031020	20121201	COOL WATER	DAVIDOFF & CIE SA	N
TMK0300804	20031022	20131023	STAX RECORDS & DESIGN (HAND)	FANTASY INC.	N
TMK0300805	20031022	20111008	HOT TOPIC	HOT TOPIC INC.	N
TMK0300806	20031022	20101114	MT:2	HOT TOPIC INC.	N
TMK0300807	20031022	20070325	MORBID MAKE-UP	HOT TOPIC INC.	N
TMK0300808	20031023	20130107	UNIFY	MARYJANE CIGARETTE CO. INC.	Y
TMK0300809	20031023	20130311	UNITY	MARYJANE CIGARETTE CO. INC.	Y
TMK0300810	20031023	20111106	CYDECTIN	WYETH HOLDINGS CORPORATION	N
TMK0300811	20031023	20071125	QUEST	WYETH HOLDINGS CORPORATION	N
TMK0300812	20031023	20130607	CHANEL	CHANEL, INC.	N
TMK0300813	20031024	20130617	MONTANA & DESIGN	BATMARK LIMITED	N
TMK0300814	20031024	20130218	MTR	MTR IMPORTS, INC.	N
TMK0300815	20031024	20120929	NES	NINTENDO OF AMERICA INC.	N
TMK0300816	20031024	20090214	INDEPENDENT TRUCK CO.	NHS, INC.	N
TMK0300817	20031024	20110409	INDEPENDENT TRUCK COMPANY	NHS, INC.	N
TMK0300818	20031024	20050627	SANTA CRUZ	NHS, INC.	N
TMK0300819	20031024	20120917	SANTA CRUZ (STYLIZED LETTERING)	NHS, INC.	N
TMK0300820	20031024	20130928	AVIATOR & DESIGN	THE UNITED STATES PLAYING CARD	N
TMK0300821	20031024	20130720	SUPERIOR & DESIGN	OVERSEAS FACTOR CORP.	N
TMK0300822	20031024	20080414	WIRED	ADVANCE MAGAZINE PUBLISHERS INC	N
TMK0300823	20031024	20040913	WIRED	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0300824	20031024	20100829	MODERN BRIDE	ADVANCE MAGAZINE PUBLISHERS INC	N
TMK0300825	20031024	20130209	ALLURE	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0300826	20031024	20110713	ARCHITECTURAL DIGEST	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0300827	20031024	20121224	COSMEDERM	SENSORY SYSTEMS	N
TMK0300828	20031028	20131016	MAYOR MCHEESE DESIGN	MCDONALD'S CORPORATION	N
TMK0300829	20031028	20130211	ULTRALAST	NORTH AMERICAN BATTERY COMPANY	N
TMK0300830	20031028	20130712	BER BEL	AVANT-GARDE OPTICS, LLC	N
TMK0300831	20031028	20130116	NORTHWESTERN	NORTHWESTERN GOLF COMPANY	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0300832	20031028	20120825	SIGILLVM VNIVERSITATIS ARIZONENSIS 1885 & DESIGN	ARIZONA BOARD OF REGENTS ON	N
TMK0300833	20031028	20121117	ARIZONA	ARIZONA BOARD OF REGENTS ON	N
TMK0300834	20031028	20120929	CATS	ARIZONA BOARD OF REGENTS ON	N
TMK0300835	20031029	20120820	MANASTIRKA	WESTERN FOOD & BEVERAGE INC.	N
TMK0300836	20031029	20130325	MISCELLANEOUS DESIGN (RED & YELLOW STRAND)	KULKONI, INC.	N
TMK0300837	20031029	20130225	VOLCOM	STONE BOARDWEAR INC.	N
TMK0300838	20031029	20130909	ASTRO ANOINTED	HOUSE OF MOHAN CORPORATION	N
TMK0300839	20031029	20120326	STONE DESIGN	STONE BOARDWEAR INC.	N
TMK0300840	20031029	20040410	MA LING (STYLIZED)	CHINA NATIONAL CEREALS, OILS AND	N
TMK0300841	20031029	20131108	20TH CENTURY FOX AND LOGO	TWENTIETH CENTURY-FOX FILM CORP.	N
TMK0300842	20031029	20131110	RUFFLES (STYLIZED)	RECOT, INC.	N
TMK0300843	20031029	20130607	CC MONOGRAM IN CIRCLE	CHANEL, INC.	N
TMK0300844	20031029	20050909	PARIS BLUES	PBT COMPANY, L.L.C.	N
TMK0300845	20031030	20120818	ACCLAIM	HERSHEY CHOCOLATE & CONFECTIONER	N
TMK0300846	20031030	20130322	PUMA WITH LEAPING CAT DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TMK0300847	20031030	20121102	BUCK HEAD SILHOUETTE	BROWNING	N
TMK0300848	20031030	20121102	SILHOUETTE BROWNING	BROWNING	N
TMK0300849	20031030	20111015	CUTTER & BUCK C/B & DESIGN	CUTTER & BUCK INC.	N
TMK0300850	20031030	20120326	CUTTER & BUCK	CUTTER & BUCK INC.	N
TMK0300851	20031030	20100125	C B & DESIGN	CUTTER & BUCK INC.	N
TMK0300852	20031030	20121231	COSMEDERM	SENSORY SYSTEMS	N
TMK0300853	20031031	20110620	GQ	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0300854	20031031	20130809	GOURMET THE MAGAZINE OF GOOD LIVING	ADVANCE MAGAZINE PUBLISHERS	N

SUBTOTAL RECORDATION TYPE 105

TOTAL RECORDATIONS ADDED THIS MONTH 118

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 03–16]

1515–AD19

Implementation of the Andean Trade Promotion and Drug Eradication Act

Correction

In rule document 03–6867 beginning on page 14477 in the issue of Tuesday, March 25, 2003, make the following corrections:

■ 1. On page 14477, the Cover page is in error and should read "Implementation of the Andean Trade Promotion and Drug Eradication Act; Interim Rule".

■ 2. On pages 14478 through 14500 in the running head, "Proposed Rules" should read "Rules and Regulations".

[Published in the Federal Register, December 1, 2003 (68 FR 67338)]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

Implementation of the Andean Trade Promotion and Drug Eradication Act

CFR Correction

Title 19 of the Code of Federal Regulations, Parts 1 to 140 and Parts 141 to 199, revised as of April 1, 2003, is corrected by incorporating the following amendments, originally published at 68 FR 14486–14500, Mar. 25, 2003. See also the **Federal Register** correction appearing in this part V.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. In Parts 1 to 140, on page 82, the specific authority citation for §§ 10.201 through 10.207 is revised to read, and a new specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 10.257 is added to read, as follows:

* * * * *

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

* * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

■ 2. On page 172, § 10.201 is revised to read as follows:

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

■ 3. On pages 172 and 173, in § 10.202, the introductory text is amended by removing the reference "10.208" and adding, in its place, the reference "10.207", and paragraph (b) is amended by removing paragraphs (b)(1) through (b)(8) and adding, in their place, new paragraphs (b)(1) through (b)(4) to read as follows:

§ 10.202 Definitions.

* * * * *

(b) * * *

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

* * * * *

■ 4. On page 81, § 10.208 is removed from the table of contents for part 10, and on page 177, § 10.208 is removed.

■ 5a. On page 81, a new center heading, followed by new §§ 10.241 through 10.248, is added to the table of contents for part 10 to read as follows:

Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

Sec.
10.241 Applicability.
10.242 Definitions.
10.243 Articles eligible for preferential treatment.
10.244 Certificate of Origin.
10.245 Filing of claim for preferential treatment.
10.246 Maintenance of records and submission of Certificate by importer.
10.247 Verification and justification of claim for preferential treatment.
10.248 Additional requirements for preferential treatment of brassieres.

■ 5b. On page 207, a new center heading, followed by new §§ 10.241 through 10.248, is added to read as follows:

Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. "Assembled" and "sewn or otherwise assembled" when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. "Chief value" when used with reference to llama, alpaca, and vicuña a means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. "Cut" when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign. "Foreign" means of a country other than the United States or an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-shape components. "Knit-to-shape," when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

Luggage. "Luggage" means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks,

kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term "luggage" does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term "luggage" also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Wholly formed fabric components. "Wholly formed," when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. "Wholly formed," when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile

articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United

States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stonewashing, enzyme-washing, acid washing, perma-pressing, ovenbaking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *"Cost" and "value" defined.* The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country in the format specified in paragraph (b) of this section. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 1505–01–D

Andean Trade Promotion and Drug Eradication Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	
4. Description of Article:	
5. Preference Group:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i)
B.	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii)
C.	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii)
D.	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv)
E.	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2)
F.	Handloomed, handmade, or folklore textile and apparel goods.	10.243(a)(3)
G.	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4)
H.	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6)
I.	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7)

6. U.S./Andean Fabric Producer Name & Address:	7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:	9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:		11. Company:
12. Name: (Print or Type)		13. Title:
14. Date: (DD/MM/YY)	15. Blanket Period From: To:	16: Telephone: Facsimile:

BILLING CODE 1505–01–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The "from" date is the date on

which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by Customs for that purpose;

(2) If in writing, must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____

Name

_____

Title

_____

Address

_____

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if Customs finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials,

and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* "Year" means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in

§ 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following

(that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declara-

tion of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section

an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

BILLING CODE 1505–01–D

Andean Trade Promotion and Drug Eradication Act Declaration of Compliance for Brassieres (19 CFR 10.243(a)(4) and 10.248)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____.	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: _____ Date:	8. Name and title (print or type):

BILLING CODE 1505–01–C

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production

records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the **Federal Register**.

■ 6a. On page 81, a new center heading, followed by new §§ 10.251 through 10.257, is added to the table of contents for part 10 to read as follows:

Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

Sec.

10.256 Maintenance of records and submission of Certificate by importer.
10.257 Verification and justification of claim for preferential treatment.

■ 6b. On page 207, a new center heading, followed by new §§ 10.251 through 10.257, is added to read as follows:

Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

§ 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§ 10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§ 10.251 through 10.257, the following terms have the meanings indicated:

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. "ATPDEA beneficiary country vessel" means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory

board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1) and free of duty in the case of any article described in § 10.253(a)(2).

United States vessel. "United States vessel" means a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code.

§ 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions.* No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General.* An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term "ATPDEA beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in § 10.252.

(3) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is "produced in the customs territory of the United States" for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *"Materials produced in an ATPDEA beneficiary country or countries" defined.* For purposes of paragraph (d)(1) of this section, the words "materials produced in an ATPDEA beneficiary country or countries" refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in § 10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a), and the principles and examples set forth in § 10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin.* If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials.* (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items included.* For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise

under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "J+" as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was

based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 449, including privately-printed copies of that Form, or, as an alternative to Customs Form 449, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 449;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has

not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____

Name

_____

Title

_____

Address

_____

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer

must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the

imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163—RECORDKEEPING

■ 8. In Parts 141 to 199, on page 284, in the Appendix to Part 163, three new listings are added in numerical order under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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IV. * * *

§ 10.246 ATPDEA Textile Certificate of Origin
§ 10.248 ATPDEA Declaration of Compliance for Brassieres
§ 10.256 ATPDEA Non-textile Certificate of Origin

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United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Jane A. Restani

Judges

Gregory W. Carman
Thomas J. Aquilino, Jr.
Donald C. Pogue
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Delissa A. Ridgway
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Senior Judges

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Richard W. Goldberg

Clerk

Leo M. Gordon

Slip Op. 03–153

FILMTEC CORPORATION, PLAINTIFF, v. UNITED STATES, DEFENDANT

Court No. 99–00100

[Plaintiff's motion for summary judgment granted. Defendant's cross-motion for summary judgment denied. Judgment entered for Plaintiff.]

Decided: November 25, 2003

McGuireWoods LLP[1] (*Joseph S. Kaplan*, *Holly M. Travis*) for Plaintiff.
Robert D. McCallum, Jr., Assistant Attorney General, *John J. Mahon*, Acting Attorney-in-Charge, International Trade Field Office, *Jack S. Rockafellow*, Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, *Sheryl A. French*, Attorney, Of Counsel, Office of Assistant Chief Counsel, International Trade Litigation, U.S. Bureau of Customs and Border Protection, for Defendant.

OPINION

Pogue, Judge: At issue in this proceeding is the proper classification, under 19 U.S.C. § 1202 (1994), of Plaintiff's importation of certain nonwoven fabric sheets described as AWA No. 10. Plaintiff FilmTec Corporation ("FilmTec" or "Plaintiff") challenges a decision of the United States Bureau of Customs and Border Protection ("Customs" or "Defendant"), denying FilmTec's protest filed in accordance with section 514 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1514 (1994). FilmTec's protest challenges Customs' classification of the subject merchandise under subheading 5911.40.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"), thereby imposing a duty of 12.5 percent *ad valorem*. Subheading 5911.40.00, HTSUS (1995). Before the Court are cross motions for summary judgment in accordance with USCIT Rule 56. The Court has exclusive jurisdiction over this case under 28 U.S.C. § 1581(a)(1994).

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[1] The record reflects that counsel for Plaintiff underwent a change of name during this litigation. Formerly, they were known as Ross & Hardies.

Background

The parties agree that there is no genuine dispute as to any material fact. Pl.'s Mem. Supp. Mot. Summ. J. at 7; Def.'s Mem. Supp. Mot. Summ. J. at 9. The imported merchandise, AWA No. 10, is "a nonwoven textile fabric sheet consisting of 100 [percent] polyester fibers." Jt. Stmt. Undisputed Mat. Facts para. 13 ("Jt. Stmt"). Plaintiff FilmTec imported this merchandise in rolls approximately 40.5 inches wide and 2000 meters long,[2] as manufactured by the AWA Paper Mfg. Co., Ltd. ("AWA"), a Japanese company. Jt. Stmt paras. 8, 17. AWA sold 100 percent of its production of AWA No. 10 to FilmTec, following technical specifications furnished by FilmTec.[3] *Id.* paras. 12, 19. As imported, AWA No. 10 was solely used (as intended) as a support web for a product manufactured by FilmTec in the United States, the FILMTEC FT 30 Reverse Osmosis Membrane ("RO Membrane").[4] *Id.* para. 22.

After its importation into the United States, FilmTec coats AWA No. 10 with two layers of certain polymer material to produce RO Membrane. *Id.* para. 26. First, "a microporous polysulfone interlayer coating approximately .002 [inches] thick," is cast onto the AWA No. 10 sheet. *Id.* para. 29. The surface pores of this coating have a diam-

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[2] AWA No. 10 sheets are produced from "a highly uniform and random array of polyester staple fibers thermally bonded and calendered into a tactually and visually smooth surface web." Jt. Stmt para. 15. AWA purchases polyester fibers from a supplier. *Id.* para. 16. The fibers are "mixed with water to make a homogenous water-based solution containing suspended polyester fibers." *Id.* This solution is applied to a "forming wire"; "the majority of the water is drained through the wire and the polyester fibers coagulate on the forming wire to make a wet, non-woven fabric." *Id.* The fabric is then removed from the forming wire, "pressed and dried to remove the remaining water, and passed through heated calender rolls to increase smoothness and to cause thermal bonding which increases mechanical strength." *Id.*

[3] FilmTec had the following specifications for AWA No. 10:

> a) a thickness of 3.9 ± 0.3 mils, i.e., .0039" (3.9 thousandths of an inch) plus or minus a tolerance of .0003 (0.3 thousandths of an inch);
> b) a basis weight of 85 ± 4 g/m^2, i.e., 85 grams per square meter, plus or minus a tolerance of 4 grams per square meter;
> c) a Frazier air permeability of 1.0 ± 0.5 cfm/foot^2, i.e., one cubic foot per minute per square foot, plus or minus ½ cubic foot per minute per square foot.
> d) a minimum machine tensile strength of 29.8 lbs/inch^2, i.e., a minimum of 29.8 pounds per square inch;
> e) a minimum cross-directional tensile strength of 9.3 lbs/inch^2, i.e., a minimum of 9.3 pounds per square inch.
>
> Jt. Stmt para. 20.

[4] Currently, AWA supplies FilmTec with a similar polyester sheet, AWA No. 51, for use in producing RO Membrane. Bando Dep. at 12. Reverse osmosis filtration is used to separate salt from seawater. In simple terms, reverse osmosis results when a high pressure pump forces saline feed water to be pumped into a vessel with RO Membrane. *FilmTec Membranes: Principle of Reverse Osmosis, in Tech Manual Excerpts*, Jt. Stmt, Attach. B. Reverse flow of the feed water produces purified water from the salt solution because the RO Membrane is not permeable to salt. *Id.*

eter of approximately 150 angstroms;[5] this layer serves as a substrate support for the second polymer coating. *See id.* Second, an ultra-thin barrier coating, about 2000 angstroms thick, is applied to the polysulfone surface. *See id.* paras. 26, 30. Importantly, this final layer furnishes the necessary filter characteristics of RO Membrane.[6] *Id.* paras. 28, 31. RO Membrane may be used to filter salt in "low-pressure tapwater use, single-pass seawater and brackish water desalination, chemical processing, and waste treatment." *FilmTec Membranes: FT30 Membrane Description, in Product Information*, Jt. Stmt, Attach. C at 1 ("Membrane Description").

The parties agree that while AWA No. 10 is not itself a filter medium, it is a necessary part of RO Membrane. Jt. Stmt para. 28; *see also* Membrane Description, Jt. Stmt, Attach. C (containing a three-dimensional schematic drawing of the RO Membrane). According to the General Manager of the Membrane Filtration Sector of AWA, there is no known use of AWA No. 10 or any like product as a filter. Bando Decl. paras. 1, 21–23. Defendant also submits that in its imported condition AWA No. 10 cannot function as a commercially practical filter medium, although it is a "critical component" of the RO Membrane. Def.'s Mem. Mot. Summ. J. at 3.

In 1995, Customs liquidated AWA No. 10 under subheading 5603.00.9030 of the HTSUS, which the agency described as including "[n]onwovens, whether or not impregnated, coated, covered or laminated: Other: Other: Other nonwovens, whether or not impregnated, coated or covered: thermal bonded, of staple fibers." Pl.'s Ex. 1, Headquarters Ruling ("HQ") 958415 at 2 (Mar. 26, 1996). The duty rate for this subheading was ten percent *ad valorem*. *Id.* FilmTec timely protested, seeking to reclassify AWA No. 10 under subheading 4805.40.00, HTSUS, which covers "filter paper and paperboard." *Id.*; *see also* subheading 4805.40.00, HTSUS. Customs denied FilmTec's protest, deciding that the merchandise was properly classifiable under subheading 5911.40.0000, HTSUS: "[t]extile products and articles, for technical uses, specified in note 7 to Chapter 59: straining cloth of a kind used in oil presses or the like, including that of human hair" at a duty rate of twelve and a half percent *ad valorem*. Pl.'s Ex. 1, HQ 958415 at 4 (Mar. 26, 1996); *see also* subheading 5911.40.0000, HTSUS.

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[5] An angstrom is a "unit of length, 10^{-10} meter[s]." *McGraw-Hill Dictionary of Scientific and Technical Terms* 102 (6th ed. 2003).

[6] The description of RO Membrane by FilmTec in its Product Information states:

> The major structural support is provided by the nonwoven web, which has been calendered to produce a hard, smooth surface free of loose fibers. Since the polyester web is too irregular and porous to provide a proper substrate for the salt barrier layer, a microporous layer of engineering plastic (polysulfone) is cast onto the surface of the web.

Membrane Description, Jt. Stmt, Attach. C.

In this action, FilmTec claims that the imported merchandise is classifiable under subheading 9907.56.01, HTSUS as "nonwoven fiber sheet (provided for in heading 5603)," arguing that AWA No. 10 meets the requirements of Chapter 99, Subchapter VII, U.S. Note 2 of the HTSUS.[7] Pl.'s Mem. Supp. Mot. Summ. J. at 6.

Standard of Review

Customs' classification is subject to *de novo* review pursuant to 28 U.S.C. § 2640. The Court analyzes a Customs classification issue in two steps: "first, [it] construe[s] the relevant classification headings; and second, [it] determine[s] under which of the properly construed tariff terms the merchandise at issue falls." *Rollerblade, Inc. v. United States*, 24 CIT 812, 813, 116 F. Supp. 2d 1247, 1250 (2000) (quoting *Bausch & Lomb v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998) (citation omitted)). "The proper classification of merchandise entering the United States is directed by the General Rules of Interpretation ("GRI[ ]") of the HTSUS and the Additional United States Rules of Interpretation." *Toy Biz, Inc. v. United States*, 27 CIT ___, ___, 248 F. Supp. 2d 1234, 1242 (2003) (citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998)). GRI 1 provides that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes . . . , provided such headings or notes do not otherwise require." GRI 1, HTSUS. Thus, "[a] classification analysis begins, as it must, with the language of the headings." *Orlando Food Corp.*, 140 F.3d at 1440 (citation omitted).

Under USCIT Rule 56, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." USCIT R. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). This Court decides "whether there are factual issues that are material to resolution of the action." *Ero Indus., Inc. v. United States*, 24 CIT 1175, 1179, 118 F. Supp. 2d 1356, 1359 (2000) (citing *Celotex Corp.*, 477 U.S. at 322; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). In classification actions, summary judgment is appropriate when no genuine dispute exists " 'as to . . . what the merchandise is . . . or as to its use.' " *Toy Biz, Inc.* 27 CIT at ___, 248 F. Supp 2d at 1241 (quoting *Ero Indus., Inc.*, 24 CIT at 1179, 118 F. Supp. 2d at 1360). In the absence of genuine factual issues, the " 'propriety of the summary judgment turns on the proper construction of the HTSUS, which is a question of law.' " *Toy Biz, Inc. v. United States*, 27 CIT at ___, 248 F. Supp. 2d 1234, 1241 (2003) (quoting *Clarendon Mktg., Inc. v.*

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[7] For U.S. Note 2's specifications, *see* note 12, *infra*.

United States, 144 F.3d 1464, 1466 (Fed. Cir. 1998); *Nat'l Advanced Sys. v. United States*, 26 F.3d 1107, 1109 (Fed. Cir. 1994)).

Discussion

GRI 1 directs the Court to classify merchandise by construing the headings of the tariff schedule. GRI 1, HTSUS. The parties disagree as to the heading under which the merchandise should be classified. Plaintiff argues that the most accurate heading for the subject merchandise is heading 5603, covering "[n]onwovens, whether or not impregnated, coated, covered or laminated." Heading 5603, HTSUS. The parties have stipulated that the subject merchandise is a nonwoven. Jt. Stmt para. 13. Despite this stipulation, Defendant avers that the most accurate heading is heading 5911, covering "[t]extile products and articles, for technical uses, specified in note 7 to this chapter." Heading 5911, HTSUS. The parties have stipulated that Awa No. 10 is a textile. *Id.* Both provisions, then, appear capable of describing the goods at issue. This being the case, GRI 3(a) directs the Court to consider which heading provides the most specific description. GRI 3(a), HTSUS. Heading 5911, covering all textiles, rather than only nonwovens, appears less specific than heading 5603. However, it is a "use" provision — only those textiles for "technical uses, specified in note 7 to this chapter" fall within its bounds. *Id.* Use provisions are generally considered more specific than *eo nomine* provisions such as heading 5603, and the most specific heading controls under GRI 3(a). *Orlando Food Corp.*, 140 F.3d at 1441; GRI 3(a), HTSUS. However, in order to decide whether heading 5911 describes the subject merchandise more specifically than heading 5603, reference must be had to Note 7 to Chapter 59, which outlines the technical uses that fall under heading 5911's rubric.

Note 7 to Chapter 59 states that "[h]eading 5911 applies to the following goods, which do not fall in any other heading of section XI: (a) [t]extile products in the piece . . . the following only: . . . (iii) [s]training cloth of a kind used in oil presses or the like, of textile material or of human hair."[8] Chapter 59, Note 7, HTSUS. The meaning of "straining cloth . . . used in oil presses or the like" was explored by

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[8] In its entirety, Note 7 to Chapter 59 reads as follows:

7. Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:

(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes;

(ii) Bolting cloth;

the Court in *GKD-USA, Inc. v. United States*, 20 CIT 749, 931 F. Supp. 875 (1996).

In *GKD-USA, Inc.*, the Court found that there is no clearly stated Congressional intent as to the meaning of the phrase "straining cloth" as used in the tariff schedule, and construed it in accordance with its current common and commercial meaning. *GKD-USA, Inc.*, 20 CIT at 754–55, 931 F. Supp. at 879–80. The Court determined that "straining cloth" is generally referred to as "filter cloth," being "fabric used as a medium for filtration." *GKD-USA, Inc.*, 20 CIT at 755, 931 F. Supp. at 880 (quoting *McGraw-Hill Dictionary of Scientific and Technical Terms* 715 (4th ed. 1989)). A medium for filtration "offers a single barrier in which the openings are smaller than the particles to be removed from the fluid." *GKD-USA, Inc. v. United States*, 20 CIT at 755, 931 F. Supp. at 880 (citation omitted).

In the instant case, both parties agree that AWA No. 10 is, as imported, not a filter medium. Jt. Stmt para. 28. Rather, AWA No. 10 has been engineered as a support layer for the RO Membrane. *Id.* paras. 27–28. By itself, the subject merchandise lacks the commercially useful application of the final RO Membrane, namely, the ability to filter salt from seawater. *See id.* paras. 30–31; Def.'s Mem. Mot. Summ. J. at 3.

Defendant argues, however, that AWA No. 10 falls within the rubric of heading 5911, HTSUS, as unfinished straining cloth, pursuant to GRI 2(a). GRI 2(a) states:

> [a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or finished article has the essential character of the complete or finished article.

GRI 2(a), HTSUS. Defendant contends that while AWA No. 10 is not itself a filter medium, in its imported condition it is commercially fit only for incorporation into a filter medium. Def.'s Mem. Mot. Summ.

(iii) Straining cloth of a kind used in oil presses or the like, of textile material or of human hair;

(iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;

(v) Textile fabric reinforced with metal, of a kind used for technical purposes;

(vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

Chapter 59, Note 7, HTSUS.

J. at 29. Defendant argues that because AWA No. 10 is "dedicated" to filtration, its "essential character" is fixed as being that of a straining cloth, and should thus be classified under heading 5911, HTSUS. *Id.*

While it appears that AWA No. 10, which was made to FilmTec's own specifications, has no ultimate purpose except to be incorporated into RO Membrane, it remains that whatever straining ability inheres in RO Membrane is not imparted by the AWA No. 10 support web, but by the chemical layers which FilmTec casts onto the support web after its importation. Jt. Stmt paras. 28, 31. While AWA No. 10 on its own may be capable of straining certain solids from certain liquids, this is true of many articles that would not thereby be classified as straining cloth under Note 7 to Chapter 59 (*i.e.*, a pair of pants, writing paper). Without further processing, AWA No. 10 does not have the essential character of "the complete or finished article" — the ability to strain salt from water. *Id.*; Hallan Supp. Aff., para. 4; GRI 2(a), HTSUS.

Because AWA No. 10 does not have the essential character of straining cloth under Note 7 to Chapter 59, it cannot fall within heading 5911, HTSUS, under a GRI 2(a) analysis, and therefore appears to be appropriately classified under heading 5603, HTSUS, pursuant to a GRI 1 analysis. Despite this, Defendant argues that the subject merchandise is excluded from heading 5603, HTSUS, by operation of the Explanatory Notes to Chapter 56. Def.'s Mem. Mot. Summ. J. at 20–21. While the Explanatory Notes are not legally binding, they do furnish a helpful guide to the interpretation of the HTSUS. *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1378 n.1 (Fed. Cir. 1999) (citation omitted). However, a perusal of the Explanatory Notes for Chapter 56 shows that they do not exclude AWA No. 10 from classification within the chapter.

Defendant argues that the Explanatory Note ("EN") to 56.03 excludes the subject merchandise because it states, in subpart (ij), that heading 5603 excludes "[n]onwovens *for* technical uses, of heading 59.11." Def.'s Mem. Mot. Summ. J. at 20–21 (emphasis supplied); *see also* Harmonized Commodity Description and Coding System, EN 56.03(ij) (1st ed. 1986) at 776.[9] As discussed already, however, nonwovens for technical uses may only fall into heading 5911 if they comport with the limitations of Note 7 to Chapter 59. Because the subject merchandise is not straining cloth, nor unfinished straining cloth, it is not a textile for technical use within the meaning of heading 5911. Therefore, EN 56.03(ij) cannot operate to exclude the sub-

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[9] EN 5603 reads, in part:

> The heading also *excludes*: . . .
>
> (ij) Nonwovens for technical uses, of *heading 5911*.

EN 56.03 at 776 (emphasis supplied).

ject merchandise from heading 5603.[10] As Plaintiff's merchandise is a nonwoven excluded from heading 5911, but not from heading 5603, the Court must conclude that it falls under heading 5603 under a GRI 1 analysis.

Having determined the correct subheading for the merchandise, the Court moves on to the subheadings. Heading 5603, HTSUS, has a number of subheadings, but the only one in which the subject merchandise is arguably classifiable is subheading 5603.00.90 ("Other"), with a duty rate of ten percent *ad valorem* at the time of liquidation. Subheading 5603.00.90, HTSUS.[11] However, a footnote to subheading 5603.00.90, HTSUS, directs our attention to subheading 9907.56.01, HTSUS, which authorizes duty-free treatment for "[n]onwoven fiber sheet (provided for in subheading 5603.00.90)." Subheading 9907.56.01, HTSUS. To qualify as a nonwoven fiber sheet for purposes of subheading 9907.56.01, HTSUS, merchandise must satisfy certain technical specifications laid out in U.S. Note 2 to Subchapter VII of Chapter 99.[12]

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[10] Defendant also has urged the Court to accord deference, under *Skidmore v. Swift & Co.*, to two ruling letters made by Customs. Def.'s Mem. Mot. Summ. J. at 10–12. Under *Skidmore*, this Court will apply deference to a ruling letter according to its persuasiveness. *United States v. Mead Corp*, 533 U.S. 218, 221 (2001); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). In both HQ 958415 (Mar. 26, 1996) and HQ 958248 (June 4, 1996), Customs stated that EN 56.03 operates to exclude the merchandise from Chapter 56. As already discussed above, that Note does not in fact exclude the subject merchandise. Founded, as they were, on an incorrect reading of EN 56.03(ij) and heading 5911, both HQ 958415 and HQ 958248 lack the persuasive authority that would bring us to apply *Skidmore* deference. Because the subject merchandise does not satisfy the limitations of Note 7 to Chapter 59 and therefore is not a textile "for technical uses, of heading 5911," it would be appropriately classified under heading 5603.

[11] At the time of liquidation, the subheadings to heading 5603 were as follows:

5603.00		Nonwovens, whether or not impregnated, coated, covered or laminated:	
5603.00.10		Floor covering underlays . . .	
		Other:	
5603.00.30	00	Laminated fabrics	(223)
5603.00.90		Other	

Subheading 5603.00.90, HTSUS (1995).

[12] The specifications are as follows:

> 2. For the purposes of heading 9907.56.01, the term *"non-woven fiber sheet"* means sheet comprising a highly uniform and random array of polyester fibers 1.5 to 3.0 denier, thermally bonded and calendered into a smooth surface web having—
>
> (a) a thickness of 3.7 to 4.0 mils;
>
> (b) a basis weight of 2.5 oz. per sq. yd.;
>
> (c) a machine tensile strength of 30 lb [sic] per sq. in. or greater;
>
> (d) a low cross-direction tensile (approximately 1/3 of MD tensile strength; and
>
> (e) a Frazier air permeability of 1.0 to 1.5 cfm per sq. ft.

Plaintiff's product satisfies these requirements with certain small deviations.[13] Because these deviations are not commercially significant, Plaintiff argues that the rule of *de minimis* permits AWA No. 10 to fall within the constraints of the Note to Subchapter VII of Chapter 99 and qualify, therefore, for duty-free status. Pl.'s Mem. Mot. Summ. J. at 24. Defendant argues that the highly detailed nature of the Subchapter VII specifications militates against the application of the rule of *de minimis*, in that Congress wished the subheading to apply only to products meeting its precise requirements. Def.'s Reply to Pl.'s Mem. Mot. Summ. J. at 10–11.

The rule of *de minimis* is a general rule of legal construction and forms part of the background against which all statutes are construed. *Wis. Dep't of Revenue v. Wrigley*, 505 U.S. 214, 231 (1992). However, the rule is applied only where it will promote "the statutory purpose" — the intent of the framers of the law. *Alcan Aluminum Corp. v. United States*, 165 F.3d 898, 903 (Fed. Cir. 1999); *see Ciba-Geigy Corp. v. United States*, 25 CIT ___ , ___ , 178 F. Supp. 2d 1336, 1352 (2001). Therefore, in order to decide whether the rule should be applied in Plaintiff's favor, it is necessary to understand the background and history of subheading 9907.56.01, HTSUS.

The subheading was first proposed in identical bills by Representative Frenzel and Senator Durenberger of Minnesota, Plaintiff's home state, in March and May, 1989, respectively. H.R. 1428, 101st Cong. (1989); S. 1015, 101st Cong. (1989). In his remarks to the Senate on introducing the bill, Senator Durenberger alluded to a constituent producer of reverse osmosis modules who would benefit from duty free status for AWA paper, which was described in the bill as "plastic web sheeting."[14] 135 Cong. Rec. 9,542 (1989). The constituent producer would appear to be Plaintiff, as no other producer of reverse osmosis modules operated in Minnesota at the time. Mem. from Int'l Trade Comm'n to The Comm. on Ways and Means of the United States House of Representatives, *H.R. 1428, 101st Cong., A Bill to Suspend Temporarily the Duty on Certain Plastic Web Sheet-*

Chapter 99, Subchapter VII, U.S. Note 2, HTSUS (1995) (emphasis supplied). Denier is "[a] unit of weight used to estimate the fineness of silk, rayon, or nylon yarn." IV Oxford English Dictionary, 457 (2d ed. 1989).

[13] The specifications for AWA No. 10 are outlined *supra*, note 3. The parties stipulate that AWA No. 10 comprises "a highly uniform and random array of polyester staple fibers" "thermally bonded and calendared into a . . . smooth surface web." Jt. Stmt para. 15. The basis weight of AWA No. 10, converted from metric to English measurement, is 2.4–2.6 oz. per sq. yd. To perform this conversion, the following formula should be applied. First, multiply 81 grams (the lower limit of FilmTec's basis weight) by .03527396. This calculation produces the number of ounces per sq. meter. That figure must then be transformed so as to represent oz. per sq. yd. To do so, multiply the figure by (1/1.195990). Repeat with 89 grams (the upper limit of FilmTec's basis weight). The results should indicate a range of 2.4–2.6 oz. per sq. yd. *McGraw-Hill Dictionary of Scientific and Technical Terms* 2330 (6th ed. 2003).

[14] AWA No. 10 would be correctly described as a "plastic" as it is made from polyester fibers. 21 *The New Encyclopedia Britannica* 291 (15th ed. 1986).

ing, Def.'s Reply to Pl.'s Mot. Summ. J., Attach. C at 4 (July 13, 1989) ("July 13, 1989 Memo"); Mem. from Int'l Trade Comm'n. to the Comm. on Finance of the United States Senate, S. 1015, 101st Cong., *A Bill to Suspend Temporarily the Duty on Certain Plastic Web Sheeting*, Def.'s Reply to Pl.'s Mot. Summ. J., Attach. C at 5 (Sept. 21, 1989) ("September 21, 1989 Memo"). The bills were passed as part of the Customs and Trade Act of 1990, creating subheading 9902.56.03, HTSUS, (certain nonwoven fiber sheets). Customs and Trade Act 1990, § 425, 1990 U.S.C.C.A.N. (104 Stat.) 688. Expiration was set for the end of 1992. The subheading's technical provisions were identical to those appearing at U.S. Note 2, Subchapter VII, Chapter 99, HTSUS, at the time of liquidation. *Cf. id. with* subheading U.S. Note 2, Subchapter VII, Chapter 99, HTSUS.

Prior to the subheading's expiration, Representative Ramstad of Minnesota proposed extending the duty-free treatment throughout 1995, but replacing the technical specifications to the heading with a new, slightly modified set of technical specifications exactly tracking FilmTec's then specifications for AWA No. 10. H.R. 4102, 102d Cong. (1992). The bill was referred to the House Ways and Means Committee and apparently never resurfaced. 138 Cong. Rec. 746 (1992). Congress, therefore, would seem to have made clear its intent as to subheading 9902.56.03 — its intent that the provision expire and, therefore, no longer be part of the tariff schedule.

However, in December 1994, former President Clinton deleted subheading 9902.56.03, HTSUS, and its accompanying technical specifications by proclamation. Proclamation No. 6763, 60 Fed. Reg. 1,007, 1,297 (Jan. 4, 1995). He then created a new heading, 9907.56.01, HTSUS, that was identical to 9902.56.03, HTSUS, and created new, identical technical specifications to be laid out in an accompanying note. Proclamation No. 6763, 60 Fed. Reg. at 1,336–37. In the Proclamation, the President stated that he was making changes to the Tariff Schedule in accordance with Section 111(a) of the Uruguay Round Amendments Act and Sections 1102(a) and (e) of the Omnibus Trade and Competitiveness Act of 1988, which delegated to him authority to proclaim necessary modifications to conform the HTSUS to the Uruguay Round Agreements. Proclamation No. 6763, 60 Fed. Reg. at 1,007; *see also* 19 U.S.C. § 2902 (1988); Uruguay Round Agreement Act, Pub. L. No. 103–465, § 111(a), 1994 U.S.C.C.A.N (108 Stat.) 4809, 4819.[15]

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[15] It should be noted that within a year of issuing Proclamation No. 6763, "reinstating" subheading 9902.56.03, HTSUS as subheading 9907.56.01, HTSUS, former President Clinton issued a second presidential proclamation, which transformed the subheadings of heading 5603, HTSUS. Proclamation No. 6857, 60 Fed. Reg. 64,817, 64,900 (Dec. 15, 1995). Whereas the subheadings of that heading had previously been based on use and physical characteristics, the new proclamation replaced those subheadings with subheadings based on the weight of the nonwoven merchandise. Proclamation No. 6857, 60 Fed. Reg. at 64,900. The entries which formed the basis of this dispute were liquidated on April 21, May 5, and

It appears that the expired subheading was placed back into law pursuant to a policy under which the U.S. undertook to "bind at free" goods that had previously been duty suspended under Chapter 99, Subchapter II, HTSUS, and for which there was no domestic producer who would be harmed by permanent duty-free treatment. Summers Decl., Def's First Supp. Br. Letter (Oct. 9, 2003), Ex. 1 at 2.; *see* Letter from Joseph S. Kaplan, McGuireWoods LLP, to Hon. Donald C. Pogue, U.S. Ct. of Int'l Trade (Oct. 9, 2003). This does not shed any light, however, on whether the President intended *de minimis* to apply in construing subheading 9907.56.01, HTSUS.

Nevertheless, the Court believes that the rule of *de minimis* should be applied in this case. The rule of *de minimis* is a generally accepted maxim of construction. *See Alcan Aluminum Corp.* 165 F.3d at 902 (citing *Wis. Dep't of Revenue v. Wrigley*, 505 U.S. at 214). With this principle in mind, the arguments advanced by Defendant lead to a manifestly perverse result. Customs argues that because Congress imposed such specific requirements when it drafted the original terms of subheading 9907.56.01, HTSUS, the provision should be read against the application of *de minimis.* Def.'s Reply to Pl.'s Mem. Mot. Summ. J. at 10–11. However, Customs has failed to provide the Court with any other object in production at the time of liquidation which fits squarely within the parameters of the note to Subchapter VII. *See* Def.'s Second Supp. Br. Letter (Oct. 29, 2003). Indeed, Customs admits to its own belief that no such goods existed at the time of liquidation. *Id.*

While Defendant states that it has classified certain goods under subheading 9907.56.01, HTSUS, in the past, it admits that most, if not all, of those goods were wrongly classified, as the goods did not fit within the parameters. *Id.* The necessary implication of the apparent non-existence of any good conforming to subheading 9907.56.01, HTSUS, is that the provision is superfluous. One of the first principles of statutory construction is that a statute must be construed so as to give meaning to all its parts. *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (citations and quotations omitted). The Court will not hold that a tariff provision exists entirely speculatively, lying dormant until some future time at which a good that fits may be produced. It is illogical to suggest that both Congress and the President placed this provision into law knowing that it described no actual good. When this incongruous result is combined with legislative history suggesting that the provision was originally proposed

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June 9, 1995, so that this later presidential proclamation does not apply to their classification. HQ 958415 (Mar 26, 1996). Although we do not so decide, it does not appear that the later proclamation would substantively change the classification of the goods at issue here, as they fall within the purview of one of the new weight-based subheadings, namely 5603.13.00, HTSUS, covering nonwovens "weighing more than 70 g/m^2 but not more than 150 g/m^2." Subheading 5603.13.00, HTSUS (1996); *see* Def.'s Second Supp. Br. Letter at 2 (Oct. 29, 2003); FilmTec's specifications for AWA No. 10, *supra* note 3.

primarily as a means of benefitting Plaintiff,[16] the Court sees no barrier to applying a *de minimis* standard.

Moreover, Plaintiff's product by and large fits within the requirements of U.S. Note 2 to Subchapter VII of Chapter 99. The deviations of Plaintiff's product from the specifications laid out in that Note are small. For instance, the specifications lay out a thickness of 3.7 mils to 4 mils.[17] *See supra* note 12. Plaintiff's product runs from 3.6 mils to 4.2 mils. The basis weight in the note's specifications is 2.5 oz. per sq. yd. *See supra* note 3. FilmTec's basis weight is 2.4–2.6 per sq. yd. *See supra* notes 12 & 13. The note specifies Frazier air permeability of 1.0 to 1.5 cfm per sq. ft.; FilmTec's required air permeability is 1.0 ± 0.5 cfm per sq. ft. *See supra* notes 3 & 12. FilmTec's product specifications fit within the note's specifications for cross-directional tensile strength and machine tensile strength. *Id.* Finally, while the denier of FilmTec's product was stipulated as unknown, there is some evidence in the record to suggest that it falls within the boundaries of the note. *Custom's Laboratory Report*, Def.'s Reply to Pl.'s Mem. Mot. Summ. J., Attach. A (July 2, 1991) (indicating denier of 2.8).

Even were the deviations somewhat greater, classifying AWA No. 10 as fitting within subheading 9907.56.01, HTSUS, through an application of *de minimis* is certainly more acceptable than the alternative proposed by Defendant which, in its strict adherence to the provisions of U.S. Note 2 to Subchapter VII, would force us to hold that there is, apparently, no product which is described by the provision. Moreover, as described above, it appears that the subheading was originally proposed for the sole purpose of helping Plaintiff's business of creating RO Membrane.[18] *See* Statement of Sen.

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[16] *See* Statement of Sen. Durenberger, 135 Cong. Rec. 9,542 (1989); July 13, 1989 Memo at 4; Sept. 21, 1989 Memo at 5.

[17] A "mil" is "a unit of length, equal to .001 inch," or one one-thousandth of an inch. *McGraw Hill Dictionary of Scientific and Technical Terms* 1342 (6th ed. 2003).

[18] The Court notes that Defendant submitted advisory letters prepared by the International Trade Commission for the benefit of Congress while they were considering H.R. 1428, 101st Cong. (1989), S. 1015, 101st Cong. (1989) and H.R. 4102, 102nd Cong. (1992). These letters express the concern that any support web being imported for use in the production of reverse osmosis filtration membranes should be such that salt particles as small as .003 micrometers could be filtered out by the finished product. July 13, 1989 Memo at 2; Sept. 21, 1989 Memo at 2; Mem. from Int'l Trade Comm'n to Comm. on Ways and Means of the U.S. House of Representatives, *H.R. 4102, 102nd Cong. A Bill to Extend Until January 1, 1995, the Existing Suspension on Certain Plastic Web Sheeting, and to Correct the Description of Such Sheeting*, Def.'s Reply to Pl.'s Mot. Summ. J., Attach. C at 2 (undated). While there is some information in the record to suggest that FilmTec's RO Membrane is capable of straining such small particles, it is not a stipulated fact. Hallan Supp. Aff. para. 4; *see also* Jt. Stmt. However, the fact that the International Trade Commission was concerned about salt particle size does not necessarily translate to the concern or intent of Congress or the President. Nowhere in U.S. Note 2 to Subchapter VII is the size of salt particles to be filtered mentioned; nor was it mentioned by Senator Durenberger in his remarks on proposing the original bill, by the Senate Report explaining the intent behind the provisions of the Cus-

Durenberger, 135 Cong. Rec. 9,542 (1989); S. Rep. No. 101–252, at 18–19 (1990), *reprinted in* 1990 U.S.C.C.A.N 928, 945–46. While Congress chose not to renew the provision after its expiration, and it was resurrected by the executive as part of trade negotiations rather than by direct Congressional choice, the provision's original intent may still help to inform us in the absence of any statement on the issue by the President.

The Court is therefore persuaded that the merchandise at issue here is classifiable under heading 5603, HTSUS, covering "[n]onwovens, whether or not impregnated, coated, covered or laminated." Heading 5603, HTSUS. Furthermore, the merchandise is classifiable under subheading 9907.56.01, HTSUS, ("[n]onwoven fiber sheets") by virtue of the application of the footnote to subheading 5603.00.90 ("Other") of heading 5603 and the rule of *de minimis*. Accordingly, Plaintiff's motion for summary judgment will be granted and Defendant's motion for summary judgment denied.

Slip Op. 03–154

FORMER EMPLOYEES OF OXFORD AUTOMOTIVE U.A.W. LOCAL 2088, PLAINTIFFS, v. UNITED STATES DEPARTMENT OF LABOR DEFENDANT.

Court No. 01–00453

JUDGMENT

RESTANI, Chief Judge: This case having come before the court for decision on the Notice of Revised Determination on Remand, consistent with Slip Op. 03–129, entered on October 2, 2003,

IT IS HEREBY ORDERED that the Notice of Revised Determination on Remand of the United States Department of Labor is sustained.

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toms and Trade Act 1990, of which the establishment of subheading 9902.56.03, HTSUS (the identically worded predecessor to subheading 9907.56.01, HTSUS) forms a part, or by the House Report on the same issue. Statement of Sen. Durenberger, 135 Cong. Rec. 9542 (1989); S. Rep. No. 101–252, at 18–19 (1990), *reprinted in* 1990 U.S.C.C.A.N 928, 945–46; H. R. Conf. Rep. No. 101–650 at 185–86 (1990), *reprinted in* 1990 U.S.C.C.A.N. 989, 1075–76. Consequently, any differences between the parties on this issue do not create a dispute as to a material fact, and do not preclude summary judgment.

SLIP OP. 03–155

CARNIVAL CRUISE LINES, INC., ET AL. PLAINTIFFS, v. THE UNITED STATES, DEFENDANT.

Consolidated Court No. 93–10–00691

JUDGMENT

MUSGRAVE, Senior Judge: In its decision dated July 31, 2002, the Court granted-in-part Plaintiffs' motion for partial summary judgment, and granted Defendant's motion for summary judgment as to all remaining matters. *Carnival Cruise Lines, Inc. v. United States*, 246 F.Supp. 2d 1296 (2002). The Court further instructed the parties to confer with each other in an effort to reach a stipulation on the amount of a final judgment. The parties have reported to the Court that they have agreed on the terms of a stipulated final judgment, without prejudice to either party's right to appeal.

NOW THEREFORE, in accordance with the Court's July 31, 2002 decision and the parties' stipulation, it is hereby ORDERED, ADJUDGED AND DECREED as follows.

1. Plaintiffs' motion for partial summary judgment is GRANTED-IN-PART, and Defendant's motion for summary judgment is GRANTED as to all remaining matters;

2. Plaintiffs shall recover from Defendant the amount of $322,311, plus interest pursuant to 28 U.S.C. § 2644 from October 18, 1993 to the date of payment; and

3. This action is hereby DISMISSED as to all remaining matters.

SO ORDERED.

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